

FILED

MAY 15 2001

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHARLES MARTIN,

Petitioner,

No. CIV S - 99 - 0223 WBS GGH P

vs.

S.L. HUBBARD, et al.,

Respondents.

FINDINGS AND RECOMMENDATIONS

Petitioner is proceeding with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On March 14, 2001, petitioner, pursuant to the court's Order and Findings and Recommendations of February 1, 2001, filed a third amended petition. In the February 1, 2001, order, the court granted petitioner's March 24, 2000, motion to hold the proceedings in abeyance and stated that, following receipt of a third amended petition setting forth only exhausted claims, the court would recommend this action be stayed.

This court has authority to hold exhausted petitions in abeyance while petitioner returns to state court to exhaust new claims. Calderon v. U.S.D.C. (Taylor), 134 F.3d 981 (9th Cir. 1998). Following exhaustion, petitioner shall immediately inform the court and respondent by filing a fourth amended petition.

Accordingly, IT IS HEREBY RECOMMENDED that this action be stayed

1 pending exhaustion of new claims.

2 These findings and recommendations are submitted to the United States District
3 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty
4 days after being served with these findings and recommendations, any party may file written
5 objections with the court and serve a copy on all parties. Such a document should be captioned
6 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections
7 shall be served and filed within ten days after service of the objections. The parties are advised
8 that failure to file objections within the specified time may waive the right to appeal the District
9 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

10 DATED: May 14 2001

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13 GREGORY G. HOLLOWS
14 UNITED STATES MAGISTRATE JUDGE

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United States District Court
for the
Eastern District of California
May 15, 2001

* * CERTIFICATE OF SERVICE * *

2:99-cv-00223

Martin

v.

Hubbard

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.


That on May 15, 2001, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.

Michael Bradley Bigelow
Law Offices of Michael Bradley Bigelow
428 J Street
Suite 356
Sacramento, CA 95814-6908

SH/WBS
VC/GGH

Robert Todd Marshall
Attorney General's Office of the State of California
PO Box 944255
1300 I Street
Suite 125
Sacramento, CA 94244-2550

Jack L. Wagner, Clerk

BY: 
Deputy Clerk